SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1177

NATIONWIDE MUTUAL INSURANCE COMPANY,
Appellant,

—against—

LARS VAAGE, CLINTON JAMES LEWIS, CLINTON A. LEWIS, JOSEPHINE MONACO and FELIX N. MONACO, individually, and as parents of MICHELLE MONACO, an infant of the age of 14 years, SAMUEL C. WILLIAMS and ARTHUR WILLIAMS, JOHN J. McCLOSKEY, Sheriff of the City of New York, WILLIAM J. RICE, JR., Sheriff of the County of Albany, GEORGE F. SPIKE, Sheriff of the County of Yates, NELSON A. ROCKEFELLER, Governor and LOUIS J. LEFKOWITZ, Attorney General, respectively, of the State of New York, as representatives of the Sheriffs of all other counties in the State of New York, and HENRY ROOT STERN, JR., Superintendent of Insurance of the State of New York,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S SUPPLEMENTAL BRIEF IN AID OF JURISDICTIONAL STATEMENT

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Rule 16

The appellant, Nationwide Mutual Insurance Company (hereinafter "Nationwide") files the within supplemental brief, pursuant to Rule 16 of the Rules of this Court, in order to call the attention of the Court to two cases which came to the attention of counsel, or were decided, subsequent to the filing of the Jurisdictional Statement on February 29, 1968.

The question presented on this appeal concerns the constitutionality of certain statutes of the State of New York

which have been construed by the Court of Appeals of the State of New York to permit New York courts to obtain jurisdiction over non-resident defendants by attaching their automobile liability insurance policies.

As stated on page 18 of the Jurisdictional Statement, four of the seven judges of the Court of Appeals of the State of New York reasoned in *Simpson* v. *Loehmann,* N.Y.2d (decided November, 1967) that such attachments were unconstitutional, but refused to prohibit them, allegedly because that court had so recently held them to be legal and permissible in the case of *Seider* v. *Roth,* 17 N.Y.2d 111 (1966).

New Cases

On February 26, 1968, the United States District Court for the Southern District of New York held in the case of *Podolsky* v. *Devinney, et al.,* F. Supp , that such attachment procedure was in all respects unconstitutional. A copy of the opinion in the *Podolsky* case is reproduced in full in Appendix A hereto.

In addition, on March 4, 1968 the Supreme Court of the State of New York, Appellate Division, Second Department, New York State's intermediate appellate court, refused to follow the *Simpson* case, and held in *Vaage* v. *Lewis,* Misc. 2d , that such attachments were unconstitutional. A copy of the opinion of the New York court in that case is reproduced in full in Appendix B hereto.

The *Vaage* case was but one of the actions which Nationwide sought to enjoin in the instant action, and the afore-

said decision by the New York courts in that case in no way settles or disposes of the crucial questions raised here. On the contrary, the decisions in the *Podolsky* and *Vaage* cases merely serve to emphasize the need for this Court to take jurisdiction. In all probability, those cases will never be reviewed by any higher court. Counsel for *Podolsky* has advised me that plaintiff does not intend to appeal. In the *Vaage* case the plaintiff cannot appeal as of right to the New York Court of Appeals, and must obtain permission to do so from the Appellate Division, Second Department, and it would seem doubtful that that court would grant such permission, since the Judges of that court were unanimous in holding such attachments to be unconstitutional. Finally, of course, even if appeal were permitted, there is no reason to believe that the New York Court of Appeals would change its mind now that it has twice upheld the legality of such attachments in the *Seider*, and now the *Simpson* cases.

Accordingly, unless this Court takes jurisdiction over the instant appeal, the law of the State of New York with respect to the legality of the attachment of automobile liability insurance policies will continue to be confused and unsettled.

Respectfully submitted,

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